



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2015

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Ms. Danielle Folsom
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-06177

Dear Ms. Folsom:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 558316 (GC No. 22028).

The City of Houston (the "city") received a request for information pertaining to taxicab drivers and vehicles and transportation network company drivers and vehicles.¹ You state the city will make some information available to the requestor. Although you take no position as to whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Lyft, Inc. ("Lyft") and Uber Technologies, Inc. ("Uber"). Accordingly, you notified the third parties of the request for information and of each company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from Uber. We have considered the submitted arguments and reviewed the submitted information.

¹The city states, and provides documentation showing, it sent a cost estimate of charges pursuant to section 552.2615 of the Government Code and a demand for a deposit of such charges pursuant to section 552.263 of the Government Code. *See* Gov't Code §§ 552.2615, .263.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from Lyft explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude Lyft has any protected proprietary interest in the information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, the city may not withhold any of the submitted information on the basis of any proprietary interests Lyft may have in the information.

Uber contends some of the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.² RESTATEMENT OF TORTS § 757 cmt. b. This

²The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

(1) the extent to which the information is known outside of [the company];

office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Uber argues a portion of the submitted information constitutes a trade secret. Upon review, we find Uber has failed to establish a *prima facie* case the information at issue meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORD 402. Therefore, the information at issue may not be withheld under section 552.110(a).

Uber further argues the information at issue consists of commercial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Uber has not made the specific factual or evidentiary showing required by section 552.110(b) that release of the information at issue would cause the company substantial competitive harm. *See* ORD 661. Therefore, this information may not be withheld under section 552.110(b).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government

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- (2) the extent to which it is known by employees and other involved in [the company’s] business;
 - (3) the extent of measures taken by [the company] to guard the secrecy of the information;
 - (4) the value of the information to [the company] and [its] competitors;
 - (5) the amount of effort or money expended by [the company] in developing the information;
 - (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Code.³ Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Accordingly, the city must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body. The city may not withhold this information if the individuals whose information is at issue did not make a timely election to keep the information confidential or the cellular telephone service is paid for by a governmental body.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Thus, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the city must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

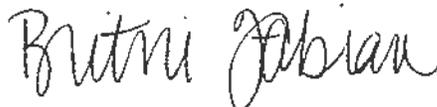
We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.*; *see also* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the city must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The city must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection 552.137(c) of the Government Code applies. The city must release the remaining information, but any information protected by copyright may only be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 558316

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Raiser
c/o Ms. Lori Fixley Winland
Locke Lord
600 Congress, Suite 200
Austin, Texas 78701
(w/o enclosures)

Lyft
c/o Mr. Joshua Sanders
Hall Attorney
4255 San Felipe, Suite 1100
Houston, Texas 77027
(w/o enclosures)

NOV - 7 2016

At 4:30 P M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-15-001596

RASIER LLC,
Plaintiff,

v.

THE HONORABLE KEN PAXTON,
Attorney General of Texas, and the
CITY OF HOUSTON, TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353RD JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This is an action under the Public Information Act ("PIA"), Tex. Gov't Code ch. 552, in which Rasier LLC ("Rasier"), sought to withhold certain information which is in the possession of the City of Houston (the "City") from public disclosure. All matters in controversy between Plaintiff, Rasier, and Defendants, Ken Paxton, Attorney General of Texas ("Attorney General"), and the City arising out of this lawsuit have been resolved by settlement, a copy of the Settlement Agreement is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Ms. Tammy Kim, on October 17, 2016, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that the City will withhold the designated portions of the information at issue. The requestor was also informed of her right to intervene in the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this motion.

The requestor did not file a motion to intervene. Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General.

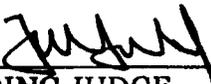
After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Rasier, the Attorney General, and the City have agreed that in accordance with the PIA and under the facts presented, the information at issue, specifically the records relating to the Transportation Network Company ("TNC"), which indicate (1) the number of licensed TNC drivers operating in the City, (2) the number of TNC Vehicle for Hire permits issued by the City, and (3) data on revenues for permits, licenses, fines and other monies paid by Rasier to the City as of the date of the request (collectively the "Requested Information"), are excepted from disclosure pursuant to Texas Government Code § 552.104. This information was not already determined to be confidential or exempted from disclosure by letter ruling OR 2015 - 06177. Pursuant to Texas Government Code § 552.104, the City will withhold the Requested Information.
2. Attorney General Letter Ruling OR 2015-06177 shall not be relied on as a previous determination.
3. All court costs and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Rasier, the Attorney General, and the City and is a final judgment.

SIGNED the 7TH day of November, 2016.



PRESIDING JUDGE

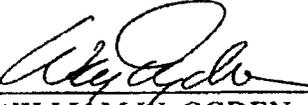
TIM SULAK

AGREED:



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Chief, Open Records Litigation
Administrative Law Division
P. O. Box 12548, Capitol Station
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Telephone: (512) 475-4195
Email: kimberly.fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT, KEN PAXTON

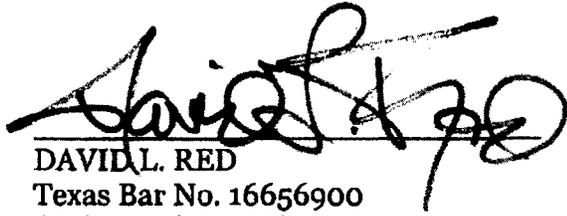


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ATTORNEYS FOR PLAINTIFF, RASIER LLC

Agreed Final Judgment
Cause No. D-1-GN-15-001596



DAVID L. RED

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ATTORNEY FOR DEFENDANT, CITY OF HOUSTON

A

CAUSE NO. D-1-GN-15-001596

RASIER LLC,
Plaintiff,

v.

THE HONORABLE KEN PAXTON,
Attorney General of Texas, and the
CITY OF HOUSTON, TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353RD JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Rasier, LLC, ("Rasier"), Ken Paxton, Attorney General of Texas (the "Attorney General"), and the City of Houston (the "City"). This Agreement is made on the terms set forth below.

Background

This case is a challenge to Open Records Letter Ruling OR 2015-06177 (April 1, 2015) which was issued in response to an open records request made pursuant to the Texas Public Information Act, Tex. Gov. Code §552.001 *et seq.* (the "PIA"): specifically, a request dated January 6, 2015 from Ms. Tammy Kim (the "Request"). In this request, some of the responsive information belonged to Rasier. After the letter ruling was issued, Rasier disputed the ruling and filed the above styled lawsuit to preserve its rights under the PIA.

Rasier submitted information and briefing to the Attorney General establishing that its information is excepted from disclosure under Texas Government Code section 552.104. The City and the Attorney General have reviewed Rasier's request and agree to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into a settlement pursuant to which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Rasier, the Attorney General, and the City have agreed that in accordance with the PIA and under the facts presented, the information at issue, specifically the records relating to the Transportation Network Company ("TNC"), which include (1) the number of licensed TNC drivers operating in the City, (2) the number of TNC Vehicle for Hire permits issued by the City, and (3) data on revenues for permits, licenses, fines and other monies paid by Rasier to the City as of the date of the Request (collectively the "Requested Information"), are excepted from disclosure pursuant to Texas Government Code § 552.104. (This information was not already determined to be confidential or exempted from disclosure by letter Ruling OR 2015-06177.) Pursuant to Texas Government Code § 552.104, the City will withhold the above described records.

2. Rasier, the City, and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the Requestor.

3. The Attorney General agrees that he will also notify the Requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of her rights to intervene to contest Rasier's right to have the City withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

7. Rasier warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that Rasier has against the Attorney General and/or the City arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against Rasier and/or the City arising out of the matters described in this Agreement.

9. The City warrants that its undersigned representative is duly authorized to execute this Agreement on behalf of the City and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the City has against Rasier and/or the Attorney General arising out of the matters described in this Agreement.

10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

RASIER, INC.

By: 
name: William Ogden
firm: Ogden, Broocks & Hall, L.L.P.

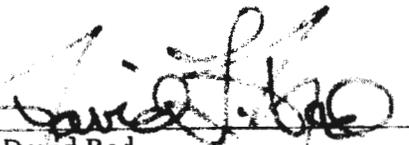
Date:

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date: 17 Oct 2016

CITY OF HOUSTON

By: 
name: David Red
title: Senior Assistant City Attorney,
General Litigation Section

Date: 10 October 2016